

Law 472HS • Second Term • 2001-2002  
Faculty of Law, University of Toronto

# Internet Law and Governance

Professor Hudson N. Janisch and  
Craig McTaggart, Doctoral Candidate

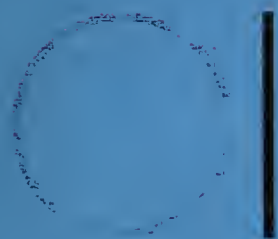
## *Course Materials*

Volume II of II

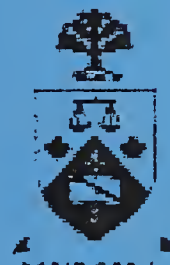
**Note:** These materials have been compiled exclusively for use in the seminar,  
"Internet Law and Governance" at the Faculty of Law, University of Toronto.

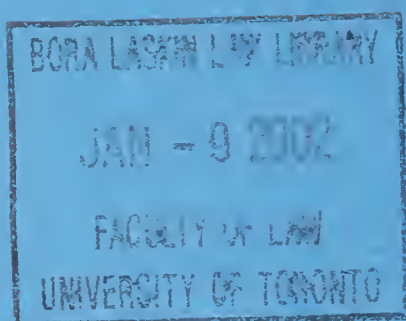
Visit the course Website at:

**<<http://www.innovationlaw.org/cm/ilg2002/index.htm>>**



CENTRE FOR  
INNOVATION LAW  
AND POLICY





Law 472HS • Second Term • 2001-2002  
Faculty of Law, University of Toronto

# Internet Law and Governance

Professor Hudson N. Janisch and  
Craig McTaggart, Doctoral Candidate

## *Course Materials*

Volume II of II

**Note:** These materials have been compiled exclusively for use in the seminar,  
"Internet Law and Governance" at the Faculty of Law, University of Toronto.

**Visit the course Website at:**

**<<http://www.innovationlaw.org/cm/ilg2002/index.htm>>**



CENTRE FOR  
INNOVATION LAW  
AND POLICY





Digitized by the Internet Archive  
in 2018 with funding from  
University of Toronto

<https://archive.org/details/internetlawgover02jani>

This course is supported by a  
Curriculum Development Award from the  
**Centre for Innovation Law & Policy**

<<http://www.innovationlaw.org/>>



CENTRE FOR  
INNOVATION LAW  
AND POLICY



# Internet Law and Governance

**Professor Hudson N. Janisch and  
Craig McTaggart, Doctoral Candidate**

## Class Schedule

|                    |           |  |
|--------------------|-----------|--|
| January 7          | Class #1  | General Introduction, Nature and Objectives of Seminar           |
| January 14         | Class #2  | Introduction to Telecommunications and the Internet              |
| January 21         | Class #3  | Internet Layers and Legal Analysis                               |
| January 28         | Class #4  | Internet Law and Policy in Canada                                |
| February 4         | Class #5  | Internet Governance I  |
| February 11        | Class #6  | Internet Governance II   |
| <i>February 18</i> |           | <i>No class - Reading Week</i>                                   |
| February 25        | Class #7  | Internet Infrastructure Development                              |
| March 4            | Class #8  | Internet Operations I  |
| March 11           | Class #9  | Internet Operations II   |
| March 18           | Class #10 | Visions of Internet Law and Governance I                         |
| March 25           | Class #11 | Visions of Internet Law and Governance II                        |
| April 1            | Class #12 | Concluding meeting, paper topic presentations, end-of-term party |
| <i>April 26</i>    |           | <i>Research papers due (4:00 pm)</i>                             |

## Volume I of II

### 1. General Introduction, Nature and Objectives of Seminar

- Janisch & McTaggart**, "Internet Law and Governance Reading Guide" (2002) .....1
- Hiltzik**, "Taming the Wild, Wild Web" *Los Angeles Times* (26 July 2001) ..... 10

### 2. Introduction to Telecommunications and the Internet

#### a. *Introduction to Telecommunications*

- Janisch**, "Effectiveness of the CRTC Hearings, Decision Making, and Appeal Processes" in Richard Ivey School of Business, *Adapting to New Realities: Canadian Telecommunications Policy Conference* (London: Ivey, 1998)..... 14

- McTaggart**, "IP Telephony and the Internet: Canada Case Study", commissioned for 3rd World Telecommunication Policy Forum (WTPF) on IP Telephony, Geneva (7-9 March 2000) (excerpt: sections 2 and 3) ..... 31

#### b. *Introduction to the Internet*

- Werbach**, "Digital Tornado: The Internet and Telecommunications Policy", United States Federal Communications Commission (FCC) Office of Plans and Policy Working Paper Series No. 29 (March 1997): Sec. II, "What is the Internet?" ..... 57

- Frieden**, *Managing Internet-driven Change in International Telecommunications* (Artech House, 2001): Ch. 1, "Telecommunications in an Internet-driven Information Economy" ..... 74

#### c. *Introduction to 'Code'*

- Lessig**, *Code And Other Laws Of Cyberspace*: Ch. 1, "Code Is Law"; Ch. 4, "Architectures of Control"; Ch. 5, "Regulating Code"

### 3. Internet Layers and Legal Analysis

#### a. *Network layers and architectures*

- Wu**, "Application-centred Internet Analysis" (1999) 85 *Virginia L. Rev.* 1163 ..... 89

- Steinberg**, "Netheads vs Bellheads", *Wired* (October 1996) ..... 111

#### b. *Legal implications of Internet architecture*

- Lessig**, *Code And Other Laws Of Cyberspace*: Ch. 7, "What Things Regulate"

- Lemley & Lessig**, "The End of End-to-End: Preserving the Architecture of the Internet in the Broadband Era" (2001) 48 *UCLA L. Rev.* 925 (excerpt: pp. 925-940) ..... 121

## 4. Internet Law and Policy in Canada

### a. *Layered analysis*

**McTaggart**, "A Layered Approach to Internet Legal Analysis" [*Download from Website*]

**McTaggart**, "IP Telephony and Canada's Telecommunications Regulatory Regime" (2000-01) 1 *Internet & E-Commerce Law in Canada* 49 ..... 130

### b. *Broadband open access*

**Denton & Ménard**, "A Paradigm Shift for the Stupid Network: Interconnecting with Legacy Networks in the Internet Era" (15 June 2000) ..... 138

**National Broadband Task Force**, "The New National Dream: Networking the Nation for Broadband Access," (June 2001): (excerpt: pp. 1-8)..... 169

**Denton & Ménard**, "The Broadband Task Force Report votes for the Internet" (20 June 2001) ..... 178

**Platt**, "The Future Will Be Fast But Not Free," *Wired* (May 2001) ..... 181

## 5. Internet Governance I

**"White Paper"**: United States Department of Commerce, *Management of Internet Names and Addresses* (5 June 1998)..... 189

**Froomkin**, "Wrong Turn In Cyberspace: Using ICANN To Route Around The APA And The Constitution" (2000) 50 *Duke L.J.* 17 (excerpt: pp. 1-93) ..... 213

## 6. Internet Governance II

### a. *New Top-level domains*

**Roberts**, ICANN, "Testimony of Michael M. Roberts Before U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Communications" (14 February 2001) ..... 252

### b. *Alternative roots*

**Lynn**, ICANN, "ICP-3: A Unique, Authoritative Root for the DNS" (9 July 2001)..... 270

**New.Net**, "A Proposal to Introduce Market-Based Principles into Domain Name Governance" (2001) ..... 279

### c. *ENUM*

**McTaggart**, "E PLURIBUS ENUM: Unifying International Telecommunications Networks and Governance" (1 October 2001) ..... 293

7. Internet Infrastructure Development

a. The Internet Engineering Task Force (IETF)

ISOC, "The Internet Society and the Internet Standards Process"  
On The Internet (Spring/Summer 2001) ..... 326

Bradner, "The Internet Engineering Task Force" On The Internet  
(Spring/Summer 2001)..... 329

Baker, "A View From the Helm: Fred Baker talks about life as chair  
of the IETF" On The Internet (Spring/Summer 2001) ..... 334

"Transcript of Dialogue between J. Zitttrain and D. Clark, Harvard Law  
School, Cambridge, Massachusetts (1 October 1997)" ..... 340

b. Quality of service (QoS)

Huston, "Quality of Service – Fact or Fiction?" (March 2000)  
3 The [Cisco] Internet Protocol Journal 27 ..... 373

c. Wiretapping

RFC 2804, IAB & IESG, "IETF Policy on Wiretapping" (May 2000) ..... 381

Volume II of II

8. Internet Operations I

a. Peering and interconnection

Frieden, "Without Public Peer: The Potential Regulatory and Universal  
Service Consequences of Internet Balkanization" (1998) 3 Virginia J.L. & Tech. 8 ..... 391

Staple, "Follow the Money: Network-to-Network Payments for Internet Telephony  
and Other IP Traffic Streams," in TeleGeography Inc., TeleGeography 2001  
(October 2000) ..... 409

b. International charging arrangements for Internet services (ICAIS)

Kende, FCC, "The Digital Handshake: Connecting Internet Backbones,"  
FCC Office of Plans and Policy Working Paper Series No. 32 (September 2000)..... 424

ITU, Trends in Telecommunication Reform 2000-2001: Interconnection Regulation,  
Ch. 7, "Internet Interconnection" (2000) ..... 472

9. Internet Operations II

a. Instant messaging

**FCC**, "In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee" (22 January 2001) (excerpts: pp. 1-8, 57-83) ..... 490

**AOL Time Warner Inc.**, letter to FCC, "Progress Report on Instant Messaging Interoperability" (23 July 2001) (without attachments)..... 525

**Sandberg**, "High-Tech Hardball" *Wall Street Journal* (19 June 2001) ..... 536

b. Bellheads vs. Netheads retrospective

**Frieden**, "Revenge of the Bellheads: How the Netheads Lost Control of the Internet" (2001) ..... 538

10. Visions of Internet Law and Governance I

a. Does the Internet need 'governance' at all?

**Barlow**, "A Declaration of the Independence of Cyberspace" (1996) ..... 558

**Gillett & Kapor**, "The Self-Governing Internet: Coordination By Design," in B. Kahin & J.H. Keller, eds., *Coordinating the Internet* (MIT Press, 1997) ..... 560

**Radin & Wagner**, "The Myth of Private Ordering: Rediscovering Legal Realism in Cyberspace" (1998) 73 *Chi.-Kent L. Rev.* 1295 ..... 579

b. ICANN: International, private-sector, consensus-based self-governance?

**Mueller**, "ICANN and Internet Governance: Sorting through the debris of self-regulation" (1999) 1 *info* 497 ..... 591

**Froomkin**, "Wrong Turn In Cyberspace: Using ICANN To Route Around The APA And The Constitution" (2000) 50 *Duke L.J.* 17(excerpt: pp. 165-184)..... 615

**European Parliament**, "Report on the Commission communication to the Council and the European Parliament on 'The Organisation and Management of the Internet – International and European Policy Issues 1998-2000'" (15 March 2001)..... 627

11. Visions of Internet Law and Governance II

Wisebrod, "Controlling the Uncontrollable: Regulating the Internet"  
(1995) 4 *Media & Comms. L. Rev.* 331 ..... 631

Johnson & Post, "And How Shall the Net Be Governed?: A Meditation on  
the Relative Virtues of Decentralized, Emergent Law," in B. Kahin & J.H. Keller, eds.,  
*Coordinating the Internet* (MIT Press, 1997)..... 648

Lemley, "The Law and Economics of Internet Norms" (1998) 73 *Chi.-Kent*  
*L. Rev.* 1257 ..... 663

Lessig, *Code And Other Laws Of Cyberspace*: Ch. 15, "The Problems We Face",  
Ch. 16, "Responses", Ch. 17, "What Declan Doesn't Get"

Post, "What Larry Doesn't Get: A Libertarian Response to Lessig's *Code and*  
*Other Laws of Cyberspace*" (2000) 52 *Stanford L. Rev.* 1439 ..... 682